UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,957	12/20/2000	Phil Delurgio	DEM1P004	7258

36088	7590	01/24/2006

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EXAMINER
COLBERT, ELLA

ART UNIT	PAPER NUMBER
3624	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*14 October 2005*</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date 7/14/04, 03/29/04, 10/14/05, 11/28/05, 2/4/04,
    2/10/04, 9/12/03, 08/18/03, 8/31/01, 1/4/01

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-6 are pending. Claims 1-3 have been amended and claims 5 and 6

have been added in this communication filed 10/14/05 entered as Response After Non-

Final Action.

2.   The IDS filed 10/14/05 and 11/28/05 have been considered.

3.   The 35 USC 101 Rejection has been overcome by Applicants' amendment to

claims 1 and 2 and is hereby withdrawn.

4.   The 35 USC 112, first paragraph rejection for claims 3 and 4 is hereby withdrawn

in view of Applicants' convincing arguments.

5.   The Amendments to the Specification have been reviewed and objected to a set

forth here below.

6.   The Abstract has been approved.

Specification

7.   The abstract of the disclosure is objected to because the "Attorney Docket

Number DEM1P002)" should be deleted and the status of the application should be

entered as follows: Pending or Allowed and the Patent Number or Abandoned.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US
5,377,095) Maeda et al, hereafter Maeda.

Claim 1.   Maeda teaches, A computer-implemented method for modeling cost,
comprising the steps of: receiving sales data, cleaning the sales data and generating
imputed variables; receiving cost data (col. 4, lines 1-47); and estimating cost per unit of
product from the sales data the imputed variables and the cost data (col. 4, lines 65-col.
5, line 63). Maeda did not expressly disclose receiving cost data, but it would have
been obvious to one having ordinary skill in the art at the time the invention was made
to receive cost data in view of Maeda's teachings of a sales table, a retrieved price and
a predicted sale and because such a modification would allow Maeda to have the cost
data prior to estimating the cost per unit of product from the sales data (performing a
mathematical calculation).

Claim 2.   Maeda teaches, The computer-implemented method, as recited in claim 1,
wherein the determining the cost per unit of product comprises estimating inventory
space in the store used by the product, which is estimated from sales data indicating
volume of sales of the product and cost data indicating the frequency of product delivery
(col. 7, lines 24-49).

Claim 3.   Maeda teaches, An apparatus for modeling costs, useful in association
with an optimization engine, wherein the optimization engine is configured to receive
input from the apparatus, and wherein the optimization engine is further configured to
generate a preferred set of prices, the apparatus comprising: an econometric engine for
receiving sales data, cleaning the sales data and generating imputed variables; and

a financial engine for receiving imputed variables from the econometric engine,

receiving cost data, generating a cost model, and outputting the cost model to the

optimization engine (col. 12, line 16-col. 13, line 47).

Claim 4.   Maeda failed to teach, The apparatus, as recited in claim 3, wherein the

financial engine estimates inventory space in a store used by a product from the sales

data and delivery data. Official Notice is taken that it is old and well known in the art of

estimating inventory space in a store used by a product from the sales and delivery data

It would have been obvious to one having ordinary skill in the art at the time the

invention was made to have a financial engine that estimates inventory space in a store

used by a product from the sales data and delivery data and to modify in Maeda

because such a modification would allow Maeda to have the ability to calculate the

inventory space need by each product prior to being sold to a customer.

10.   Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over

(US 5,377,095) Maeda et al, hereafter Maeda in view of Alan L. Montgomery and Peter

E. Rossi, hereafter Montgomery and Rossi.

        Claim 5. Maeda failed to teach, The computer-implemented method, as recited

in claim 1, wherein the imputed variables include at least one of a seasonality variable,

a promotional variable and a cross-elasticity variable. Montgomery and Rossi teach,

wherein the imputed variables include at least one of a seasonality variable, a

promotional variable and a cross-elasticity variable (Page 418, col. 1 –page 419, col. 1,

page 421, col. 2, paragraph 2-page 422, col. 1, paragraph 1). It would have been

obvious to one having ordinary skill in the art at the time the invention was made to have the imputed variables include at least one of a seasonality variable, a promotional variable and a cross-elasticity variable and to modify in Maeda because such a modification would allow Maeda to rely on a demand system and associated price elasticities.

Claim 6.   Maeda failed to teach, The apparatus, as recited in claim 3, wherein the imputed variables include at least one of a seasonality variable, a promotional variable and a cross-elasticity variable. Montgomery and Rossi teach, wherein the imputed variables include at least one of a seasonality variable, a promotional variable and a cross-elasticity variable (page 414, col. 2, paragraph 2-page 415, paragraph 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the imputed variables include at least one of a seasonality variable, a promotional variable and a cross-elasticity variable and to modify in Maeda because such a modification would allow Maeda to have the basic pricing decisions and market structure analyses based on the parameters of a demand system for a group of related products and to estimate the own and cross-price elasticities for all major items in one category.

Conclusion

11.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Burns et al (US 5,189,606) disclosed cost estimating and analysis.

Inquiries

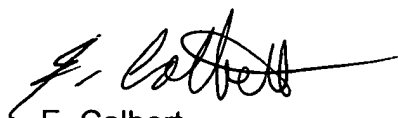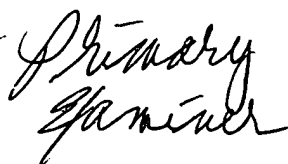12.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Ella Colbert whose telephone number is 571-272-6741.

The examiner can normally be reached on Tuesday-Thursday, 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

E. Colbert
December 17, 2005